S T A T E O F M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of **Michigan Consolidated Gas Company** for a gas cost recovery reconciliation proceeding for the 12-month period ending March 31, 2011	))))))	Case No. U-16146-R

<u>NOTICE OF PROPOSAL FOR DECISION</u>

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on May 29, 2012.

Exceptions, if any, must be filed with the Michigan Public Service Commission, P.O. Box 30221, 6545 Mercantile Way, Lansing, Michigan 48909, and served on all other parties of record on or before June 19, 2012, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before July 3, 2012. **The Commission has selected this case for participation in its Paperless Electronic Filings Program. No paper documents will be required to be filed in this case.**

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

MICHIGAN ADMINISTRATIVE HEARING SYSTEM
For the Michigan Public Service Commission

Dennis W. Mack

Digitally signed by Dennis W. Mack
DN: cn=Dennis W. Mack, c=US, email=mackd2@michigan.gov
Date: 2012.05.29 14:05:00 -04'00'

Dennis W. Mack
Administrative Law Judge

May 29, 2012
Lansing, Michigan

STATE OF MICHIGAN

MICHIGAN ADMINISTRATIVE HEARING SYSTEM

FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of **Michigan Consolidated Gas Company** for a gas cost recovery reconciliation proceeding for the 12-month period ending March 31, 2011	))))))	Case No. U-16146-R

PROPOSAL FOR DECISION

I.

PROCEDURAL HISTORY

On June 30, 2011, Michigan Consolidated Gas Company (MichCon) filed an Application with the Michigan Public Service Commission (Commission) seeking approval of its reconciliation of Gas Cost Recovery (GCR) costs and revenues for the period between April 1, 2010 and March 31, 2011. The Application indicated a $1,000,000 overrecovery, including interest, for the 12 month reconciliation period.

Pursuant to due notice, a pre-hearing conference was conducted on September 7, 2011, during which MichCon and Commission Staff appeared. During the pre-hearing conference, intervention was granted to: the Attorney General; Michigan Community Action Agency Association (MCAAA); and the Residential Ratepayer Consortium (RRC).

The hearing in this matter was conducted on February 28, 2012. During the hearing MichCon entered the direct and rebuttal testimony of the following employees: Eric W. Clinton, Principal Analyst in the Gas Supply and Planning Department; Barbara J.

Goodwin, also a Principal Analyst in the Gas Supply and Planning Department; and Jennifer C. Schmidt, Principal Project Manager in Regulatory Affairs. MichCon entered the direct testimony of W. Bernard Kramer, Regulatory Compliance Consultant in the Regulatory Policy and Operations Department. MichCon also entered Exhibits A-1 through A-24, ad seriatim. The Attorney General entered the testimony of Ralph E. Miller, an independent consulting economist, and Exhibits AG 1 through AG-12, ad seriatim. The RRC entered the testimony of Frank J. Hollewa, an independent energy consultant doing business as EPEC (Energy Planning and Engineering Consultants), and Exhibits RRC-1, RRC-2 and RRC-3. The MCAAA did not offer any witnesses, but entered Exhibits MCAAA-1 through MCAAA-7, ad seriatim. Staff entered the testimony of Nora B. Quilico, a Public Utilities Engineer in the Act 304 and Sales Forecasting Section of the Regulated Energy Division, and Gretchen Wagner, an Auditor in the Act 304 Reconciliations Section of the Regulated Energy Division, and Exhibit S-1. Under a schedule established during the pre-hearing conference, all of the parties filed post-hearing Briefs and Reply Briefs.

II.

<u>LEGAL FRAMEWORK</u>

1982 PA 304 (Act 304) establishes part of the basis for the Commission's regulation of gas utilities by providing the authority to "incorporate a gas cost recovery clause in the rates or rate schedule of a gas utility." MCL 460.6h(2). To implement such a clause, the gas utility must annually file a gas cost recovery plan for a 12-month period that includes, *inter alia*, a proposed gas cost recovery factor and 5-year forecast of its customers' gas requirements. MCL 460.6h(3) & (4). After reviewing the projections and proposals in the plan under a reasonable and prudent standard, and evaluating the forecast, the Commission accepts, rejects, or modifies the factors proposed in the plan. MCL 460.6h(6) & (7).

Subsequent to the approval of a gas cost recovery plan, Act 304 provides for a process where:

> [T]he commission shall reconcile the revenues recorded pursuant to the gas cost recovery factor and the allowance for cost of gas included in the base rates established in the latest commission order for the gas utility with the amounts actually expensed and included in the cost of gas sold by the gas utility. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue could not have been considered adequately at a previously conducted gas supply and cost review.
> MCL 460.6h(12).

If the reconciliation process establishes the net amount recovered during the period exceeds the amount actually expensed for gas sold (over-recovery), a refund or credit shall be disbursed to customers. MCL 460.6h(12) & (13). Conversely, if costs exceed the recovery under the approved GCR factor, the utility is entitled to the difference provided the excess costs were reasonable and prudent and not precluded by the Commission in the order approving the GCR Plan. MCL 460.6h(14). Excess costs incurred as a result of actions precluded in the Commission's GCR Plan order may be recovered if the "utility demonstrates by clear and convincing evidence that the excess expenses were beyond the ability of the utility to control through reasonable and prudent actions." *Id*. Both the GCR plan and reconciliation process established under Act 304 allows a gas utility to fully recover reasonably and prudently incurred gas costs. See *RRC v Michigan Public Service Commission*, 198 Mich App 144, 146 (1993).

MichCon is operating under a gas cost recovery clause and a GCR Plan for the period between April 1, 2010 and March 31, 2011 (GCR Year), which provides:

> Michigan Consolidated Gas Company is authorized to implement for the 2010-2011 plan year a base gas cost recovery factor of $7.06 per thousand cubic feet effective with the first billing month following the issuance of this order.
> Case No. U-16146, September 28, 2010 Order, p 24.

Through this reconciliation process, and consistent with the provisions of Act 304 discussed above, MichCon can recover gas supply costs incurred consistent with the approved GCR Plan. Concomitantly, gas supply costs incurred outside the GCR Plan are recoverable in this process, provided they were not the result of actions that were unreasonable or imprudent. Any net amount received during the GCR Year in excess of that actually expensed and incurred under the Plan is to be refunded or credited to MichCon's customers.

III.

THE APPLICATION

MichCon posits that during the GCR Year its GCR revenues, on an unbilled basis, were $760,000,000. Exhibit A-18, p 2, line 24. Ms. Schmidt testified this amount was "calculated by multiplying the change in unbilled volumes each month by the next month's billed GCR rate." 2 TR 115. During the same period MichCon contends its cost of gas sold was $768,000,000, which Ms. Schmidt testified encompassed:

> The Total GCR Cost of Gas Sold is composed of purchased gas costs, including GCC [Gas Customer Choice] program costs, storage costs, and costs related to sales with no GCR factor. The Average GCR Cost of Gas

> Sold based on this total, shown on Exhibit A-18 page 2 of 2 at line 12, column m is $6.36 per Mcf. The Average GCR Cost of Gas Sold is calculated by dividing the GCR Cost of Gas Sold by the Total GCR Supplies for the year of 121 Bcf. The Total GCR Cost of Gas Sold and Total GCR Supplies for the period are derived in Exhibit A-18, page 2, line 11, and page 1, line 8, respectively.
> 2 TR 108.

From the $8,000,000 difference between GCR revenues and costs, MichCon proposes to deduct $1,000,000 received in penalty and fee revenue, approximately $6,000,000 prior year over-recovery, and $2,000,000 in interest expense from its 2010-2011 GCR. This results in a $975,273 net over-recovery, including interest, during the GCR Year. Exhibit A-21, line 15; 2 TR 116.

In its Initial Brief, MichCon requests the following findings of fact:

1. <u>MichCon took all appropriate legal and regulatory actions to minimize the cost purchased gas.</u>

In support of this proposed finding, MichCon cites to the testimony of Mr. Kramer, who indicated the Company's general policy of monitoring, and if appropriate, intervening in, "all rate-related applications filed at the FERC [Federal Energy Regulatory Commission] that may significantly impact MichCon's cost of gas." 2 TR 96. In addition, MichCon monitors FERC's rulemaking proceedings, and any governmental entity that may impact its pipeline transporters. Id. Mr. Kramer also testified to specific actions MichCon undertook during the GCR Year relative governmental proceedings, along with amendments to its contracts with pipeline transporters. Id., 97-103. With the exception of the ANR Detroit to Alpena Maximum Rate Firm Transportation Service Rate Schedule FTS-1 Contract No. 117263, which is the subject of a challenge discussed below, none of the parties disputed Mr. Kramer's testimony. Therefore, this finding is adopted.

2. <u>MichCon's actual system operations for the April 2010 through March 2011 GCR year were reasonable and prudent.</u>

In support of this proposed finding MichCon cites to the testimony of Ms. Goodwin that compared the operational plan approved in the 2010-2011 GCR Plan case and the adjustments it initiated during the GCR Year. Those adjustments stemmed from: the Commission's June 3, 2010 Order in its rate case (Case No. U-15985) that required a change in weather normalization methodology from hinge-fit to 15-year normalization; actual weather conditions; increase in GCC enrollment from that anticipated in the Plan case; supply purchases; and storage operations. 2 TR 75-89. The viability of this proposed finding is addressed following the examination of the RRC's challenge to MichCon's storage operations, *infra*.

3. <u>MichCon's gas supply decisions for the April 2010 through March 2011 GCR reconciliation period were reasonable and prudent.</u>

Based on the challenges to certain of MichCon's gas supply decisions, all of which are discussed below, this proposed finding cannot be adopted.

4. <u>MichCon has a total over-recovery including interest for the 2010-2011 GCR period of $1.0 million.</u>

Based on the challenges to certain of MichCon's gas supply decisions, all of which are discussed below, this proposed finding cannot be adopted.

IV.

CONTESTED ISSUES

A. Staff's Proposed Adjustments

1. Booked GCC Reconciliation Amount for 2009-2010

MichCon set this amount at $559,308. Exhibit A-18, p. 2. Staff determined that figure includes an excess $50,000 for the billed amount for one supplier. 2 TR 210. MichCon did not take issue with Staff's determination on this point. Therefore, the 2009-2010 booked GCC reconciliation amount is, as Staff asserts, $509,308. Exhibit S-1, Line 50.

2. Affiliate Transactions

Staff seeks two adjustments based on its reading of Commission Orders in previous cases and affiliate transactions with MichCon Gathering Company (MGAT).[1] The first adjustment is to the GCR beginning balance, which MichCon states as $5,909,289, but Staff contends should be $9,151,562. Exhibit S-1, line 55. The higher amount, which equates to $3,242,273, is warranted because, as Ms. Wagner testified, it is the "MGAT Commission approved disallowance in [Case No. U-15701-R]…."[2] 2 TR 210.

The second adjustment implicates the price of gas purchased from MGAT between April 1, 2010 and September 27, 2010. The significance of the last date is the entry of the

1 Mr. Clinton testified MGAT "owns and operates a natural gas gathering system in the northern part of the lower peninsula of Michigan, more commonly known as the Antrim Expansion Project (AEP). MGAT delivers gas from the AEP into MichCon's transmission system at the interconnecting meter station located in Kalkaska County, Michigan." 2 TR 52.

2 *In the matter of the application of Michigan Consolidated Gas Company for a gas cost recovery reconciliation proceeding for the 12-month period ended March 31, 2010*. Case No. U-15701-R, December 6, 2011 Order, p 15, and Attachment A.

Commission's Order on September 28, 2010, in Case No. U-16146, which held that "MichCon shall prospectively price its MGAT purchases using its monthly city-gate index price rather than the jurisdictional rate." See AG-3. p 4. [3] In its Application, MichCon uses the jurisdictional rate for MGAT purchases made during the GCR year up to September 27, and city-gate index price for all subsequent purchases. Ms. Wagner testified that during that period, the jurisdictional rate was $6.7166/Mcf, while the city gate price ranged from $3.85/Mcf to $4.898/Mcf. On behalf of the Attorney General, Mr. Miller testified the adjustment should be approximately $1,140,000. [4] Id., 161. Mr. Miller arrived at this amount by first identifying that of the total 1,851 MMcf of gas purchased from MGAT during the GCR Year, 494 MMcf of it was received between April 1 and September 27. Id., 163-164; Exhibit AG-2 . Having established the quantity of gas received during that period, Mr. Miller employed the following methodology to determine the difference between pricing at the jurisdictional rate and city-gate index price:

> I then obtained the MichCon city gate index prices from Exhibit A-1, where they are stated in dollars per Dth. I increased these prices per Dth by a Btu factor of 1.010 to convert them to prices per Mcf. I applied each month's city gate index price per Mcf to that month's MGAT delivery quantity to determine the market value of that month's deliveries. ***
>
> When each of the monthly MGAT deliveries is priced this way, the total for the Reconciliation Period is $2,178,44. This market value is $1,139,328 less than the cost of $3,317,772 million that MichCon witness Clinton ascribes to the same MGAT deliveries by pricing them at the 2010-2012 Jurisdictional Rate $6.7166 per Mcf (Exhibit A-10, line 2).
> 2 TR 165-166; Exhibit AG-1.

Mr. Miller qualified his calculations by noting he did not have the monthly Btu factors, but

3 The Commission also held in its October 14, 2010 Order in Case No. U-15451-R, which involved the GCR Reconciliation for 2008-2009: "[T]he city-gate index price is the appropriate price for MGAT supply on a going forward basis." Exhibit AG-3, p 5. In an Order entered on February 22, 2011, the Commission clarified an internal inconsistency in the October 14 Order by expressly limiting the holding to purchases from MGAT, as opposed to all affiliate purchases.

rather relied on the 1.010 factor, which is "extremely close to the actual average Btu factor for the [2009-2010 GCR Year] and actual average for the months September 2010 through March 2011." 2 TR 166. By implication, Staff determined a $1,142,595 difference between the jurisdictional rate and city-gate index for purchases from MGAT between April 1 and September 27, 2010. [5]

MichCon argues the jurisdictional rate should apply to MGAT purchases up to September 27, 2010, under two theories. First, on January 5, 2012, it filed a petition for rehearing in Case No. U-15701-R that challenges what it terms the Commission's "erroneous determination of the price at which MichCon should purchase MGAT volumes for the April 2009 through March 2010 period." 2 TR 119. [6] Specifically, through that filing MichCon contends the Order should not be relied on determining the price in this case. However, MichCon does not provide any legal basis for the proposition that the mere filing of a petition for rehearing somehow stays the Order being challenged. To the contrary, unless or until the Commission or a court of competent jurisdiction expressly holds otherwise, the Order of December 6, 2011, in Case No. U-15701-R remains in effect.

In the alternative, MichCon argues the Order in Case No. U-15701-R is limited to that case, and thus has no effect in this case. Rather, the September 28, 2010 Order in Case No. U-16146 controls the pricing determination of MGAT purchases in this case, but only those made after its entry based on the use of term "prospective" in the Order. Under this theory, MichCon contends it properly used the jurisdictional rate for the 435,416 Mcf of

---

4 The basis for the MCAAA's support of the proposed adjustment of the MGAT transactions is addressed below.
5 This amount represents the difference between the total amount for purchased gas ($793,011,648) in Exhibit A-18, p 2, line 1, and comparable amount on Exhibit S-1, line 20 ($791,869,053).
6That petition for rehearing is pending before the Commission. See: http://efile.mpsc.state.mi.us/efile/viewcase.php?casenum=15701-R (visited May 29, 2012).

gas it purchased from MGAT between April 1, 2010 and September 27, 2010. 2 TR 122-123.

In considering the parties respective arguments, Staff's proposed adjustment of the GCR beginning balance is warranted under the express terms of the Commission's Order in Case No U-15701-R: "Michigan Consolidated Gas Company is authorized to include in its 2010-2011 gas cost recovery reconciliation beginning balance the net overrecovery of $9,151,562, as determined in this proceeding and as calculated in Attachment A to this order." December 6, 2011 Order, p 15.

As for the proper price for MGAT purchases between April 1, 2010 and September 27, 2010, the following holding of the Commission controls:

> Mich Con shall prospectively price its MGAT purchases using its monthly city-gate index price rather than the jurisdictional rate. By "prospective," the Commission means all purchases occurring after the Commission issues its final order in this case. In the case where the gas was delivered before the Commission issues this order, but the costs are not approved until after the order, then Mich Con shall book the costs at the city-gate monthly index price.
> Case No U-16146, September 28, 2010 Order, p 23-24.

Under the express terms of that Order, the MGAT purchases between April 1 and September 27, 2010, at issue in this case occurred before September 28, 2010. However, those purchases will not be approved until the Order in this case is entered. Therefore, all MGAT purchases during the GCR Year, irrespective of when they occurred, must be priced at the city-gate index. Accordingly, the GCR cost of gas should be reduced by the $1,142,595 amount Staff calculated as the difference between the jurisdictional rate and city-gate index for purchases between April 1 and September 27. As a result of that adjustment, the total amount for purchased gas should be $791,869,053.

Exhibit S-1, line 20.

Staff also takes issue with MichCon's accounting practices regarding its purchases from MGAT, which Ms. Quilico characterized as, until recently, lacking transparency and confusing. 2 TR 202. To rectify this situation, "Staff requests that the Commission order MichCon to clearly state in all prospective plan and reconciliation cases when an MGAT purchase is made. The purchase date being defined as the date that a specific price is assigned to the corresponding gas volume." 2 TR 204. Mr. Clinton acknowledged that some confusion may have resulted in the past by MichCon booking MGAT volumes as exchange gas, and subsequently reversing its status as a purchase. Id. 70. Mr. Clinton testified that going forward, all MGAT volumes will be purchased and booked each month as purchase gas. Id. Further, Mr. Clinton testified that by definition, the city-gate index price governing MGAT purchases is specific to the month, as opposed to the date, the volume is delivered to MichCon. See Exhibit A-10. In its Initial Brief, p 6, Staff concedes this issue has been alleviated as a result of the Order in Case No. U-16146.

3. Filed Inventory Cost

Staff contends the $7.1821/Mcf stated cost should be lowered to $7.1727/Mcf. Ms. Wagner testified this adjustment is warranted because:

> The decrease in the LIFO [Last In First Out] rate reduced the inventory costs on Exhibit S-1, line 22 when compared to the Company's filed inventory costs on Exhibit A-18, page 2, line 3. The lower LIFO rate also reduced the difference between the final LIFO rate of $7.1727/Mcf and the prior period estimated LIFO rate of $7.1500/Mcf. This reduction reduced the prior period storage adjustment on Exhibit S-1, line 21 of $700,794, when compared to the Company's filed adjustment amount of $990,990 on Exhibit A-18, page 2, line 2.
> 2 TR 211.

MichCon did not respond to this proposed adjustment. Therefore, the $700,794 storage amount depicted on Exhibit S-1, line 21, should be adopted.

4. Conversion Average Annual Cost of Gas Sold to Average Annual Cost of Gas Purchased

The final adjustment Staff proposes pertains to the conversion of the annual cost of gas sold utilized by MichCon (Exhibit A-18, p 2, line 12), to the annual cost of gas purchased. Mr. Wagner testified this is consistent with MichCon's use of the LIFO rate to account for inventory, which means "the inventory amount is not included in the average annual cost used to price out sales with no GCR factor." 2 TR 211-212. Ms. Wagner noted this is contrary to MichCon's Tariff, which requires that the booked cost of gas calculation include storage. Id. 212.

Ms. Schmidt noted that Ms. Wagner did not assign an amount to this adjustment, and, in her view, it is unclear what this adjustment entails. 2 TR 127. However, Ms. Schmidt did raise the issue that since 1984, MichCon has consistently priced its sales with no GCR factor at the jurisdictional rate, which does not include storage. In light of the inconsistency raised by Ms. Wagner's testimony, Ms. Schmidt suggests "MichCon's GCR Clause in its tariff should be modified to reflect this long standing Commission approved pricing for sales with no GCR factor." Id. 128.

On its face, Staff's proposed adjustment does not seem relevant to the purpose of this proceeding: i.e. "reconcile the revenues recorded pursuant to the gas cost recovery factor and the allowance for cost of gas included in the base rates established in the latest commission order for the gas utility with the amounts actually expensed and included in the cost of gas sold by the gas utility. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue could not have been considered adequately at a previously conducted gas supply and cost review." MCL 460.6h(12). Rather, the issue should be addressed in the proper proceeding, such as MichCon's next general rate case.

Based on the foregoing, Staff has established that MichCon had a cumulative over-recovery, with interest, of $5,689,360, during the GCR Year. Exhibit S-1, line 66.

B. The Attorney General's Proposed Adjustment

This proposed adjustment involves $1,212,253 for transportation charges that MichCon included in its cost of gas. Exhibit A-8, lines 30-31. The charges were paid under the ANR Alpena contract, which went into effect on September 1, 2010, and expires on August 31, 2012. Mr. Clinton testified to the specific terms and genesis of this contract:

> The ANR Alpena contract is a firm transportation contract with MichCon as the shipper and ANR as the transporter for 50 MDth/d of winter service and 20 MDth/d of summer service with a 575 psi pressure guarantee. The ANR Alpena contract provides for delivery of gas to MichCon's Alpena transmission system which is located in the northeast portion of the lower peninsula of Michigan. Supply for the Alpena system was primarily sourced from the Duke ConocoPhilips Midstream (DCP Midstream) E. Caledonia processing plant. However, in June 2010, MichCon received notice from DCP Midstream that it was planning to idle its East Caledonia plant as early as September 2010. Consequently, MichCon contracted with ANR to provide service to supply MichCon's Alpena system.
> 2 TR 49.

Given the circumstances, i.e. the June 2010 notice that the E. Caledonia facility would be idled in 3 months, the contract was not included in MichCon's GCR Plan case (Case No. U-16146), which was filed in December of 2009. Id., 66. However, it was entered into based on MichCon's determination that it "was an appropriate, reasonable and prudent alternative to meet peak day requirements." Id.

Mr. Miller, on behalf of the Attorney General, makes the following arguments on why the transportation charge should be recovered through base rates, and not in MichCon's cost of gas during the GCR Year:

> • MichCon does not — and cannot — use the ANR Alpena contract to obtain gas supplies. It would therefore be improper for MichCon to recover the cost of this contract through the GCR mechanism.
>
> • MichCon uses the ANR Alpena contract to integrate its system so that it can distribute gas throughout its service territory. Gas distribution costs, including the ANR Alpena costs for system integration, are properly recovered through "non-gas" charges in base rates.
>
> • MichCon needs the ANR Alpena contract to serve the end-user transportation ("EUT" or "transportation") customers and the Gas Customer Choice ("GCC") customers connected to its Alpena System, because MichCon has no other way to deliver their gas to its Alpena System. It would be unfair and discriminatory for MichCon to recover the ANR Alpena contract costs through the GCR mechanism, because all of the GCR costs are paid only by MichCon's GCR sales customers.
>
> 2 TR 178.

In regards to the first and second contentions, Mr. Miller characterizes the ANR Alpena contract solely as a means to transport, as opposed to obtain, gas. Id., 188. Mr. Miller testified that transportation is not a gas supply activity properly included as a cost of gas expense. Concomitantly, Mr. Miller contends the contract is a means for MichCon to integrate its distribution system, based on his definition of integration: "a combination of storage, transmission, and distribution facilities to serve end-user loads that vary widely from on day to the next." 2 TR 185. Since MichCon's Alpena System is basically an island, i.e. the company-owned storage facilities are not connected to it through company-owned transmission lines, the ANR Alpena pipeline is the "functional equivalent of a transmission line owned by MichCon and connecting its Detroit System and Alpena System." Id., 187-188. In support of his "functional equivalent" theory, Mr. Miller noted the varying types of gas transported through the pipeline:

> From a contractual perspective, gas received into the Alpena System can include gas purchased by MichCon itself as GCR supply; gas delivered by suppliers participating in the GCC program; gas delivered for the account of EUT [end-user transportation] customers, either by the customers themselves or by their third-party suppliers; and gas owned by MichCon and transported to the Alpena System for MichCon's account by some other party (such as ANR), but not as part of a GCR purchase. Gas received into the Alpena System also includes gas that MichCon receives from production facilities, transports across the Alpena System, and redelivers to a pipeline for carriage to a market off the Alpena System.
> Id., 183.

Based on his characterization that it serves as a component of system integration, and not a means for MichCon to obtain new or additional GCR gas supplies, Mr. Miller equates the ANR Alpena contract with a transaction from the 1990's known as the Trufant contract:[7]

> The Original Trufant contract is an agreement between MichCon and ANR for ANR to provide 400,000 Dth per day of firm transportation service from MichCon's Detroit area system to MichCon's Grand Rapids area system. The Original Trufant contract serves the same purpose for MichCon's Grand Rapids area system that the ANR Alpena contract serves for MichCon's Alpena System….
>
> MichCon negotiated the Original Trufant contract with ANR in 1991, and service began in 1993. At that time, MichCon itself proposed that it recover the cost of the Original Trufant contract in its base rates. The Commission approved that ratemaking treatment in its September 25, 1991 order in MichCon's "Supply Realignment" proceeding, Case No. U-9638. I testified on behalf of the Attorney General in that proceeding, and I supported that ratemaking treatment.

7 The Original Trufant contract, also known as the "paper pipeline", involved MichCon's efforts to integrate its storage and production facilities with its Grand Rapids service area by constructing its own pipeline, and in the process end its dependence on "high-priced daily service entitlements for gas purchased from ANR." Exhibit AG-7, p 64. Ultimately MichCon and ANR entered into a firm transportation agreement with favorable pricing provisions, thereby negating the need for the proposed connecting pipeline. The cost of that agreement was included in base rates, while the cost of a subsequent Trufant contract involving incremental transportation was recovered through the GCR process. Id., p 67.

> In 2003 and 2004, MichCon sought to have the ratemaking treatment changed, and to shift the recovery of the Original Trufant contract costs from its base rates to its GCR rates, and the issue was litigated in 2004 in MichCon's general rate case, No. U-13898. I testified in that proceeding too, and I opposed MichCon's request. The Commission denied that request in its April 28, 2005 order in Case Nos. U-13898 and U-13899. My testimony in this proceeding shows that the situation of the ANR Alpena contract is similar to the key factors that led MichCon to propose base rate treatment for the Original Trufant contract, and that led the Commission to retain that treatment when MichCon sought to shift that cost to its GCR rates. The Commission identified and discussed these factors at pages 63-68 of its April 28, 2005 order in Case Nos. U-13898 and U-13899. A copy of these pages accompanies my testimony as Exhibit AG-7.
> 2 TR 179-180.

Mr. Miller also contends that unlike its other pipeline transportation contracts, which have receipt points in major areas of production hubs that create a "robust gas supply market", the ANR Alpena contract's receipt point is, similar to Trufant, MichCon's Detroit system. Id., 189. Accordingly, Mr. Miller contends the ANR Pipeline contract is properly treated for ratemaking as similar company owned transmission lines. Finally, Mr. Miller's notes that the gas transmitted through the ANR Alpena pipeline is destined for all of its customers, and thus the $1,212,253 cost of the contract should not be borne only by GCR customers. Id., 190-191. The MCAAA agrees with the Attorney General's proposed adjustment.

Both Staff and MichCon argue against the Attorney General's proposed adjustment for the ANR Alpena contract. Staff focuses on the short-term and variable nature of the contract, and while it concedes the contract benefits non-GCR customers, it asserts its primary function is to reliably serve Alpena area GCR customers. MPSC Staff's Initial Brief, pp 7-8. Under these circumstances, Staff recommends the contract costs should be included in the cost of gas until they can be properly allocated in a rate case. Id., p 8. MichCon contends that under Act 304 the issue is properly framed as whether the

$1,212,253 cost of the contract was reasonably and prudentially incurred. See MCL 460.6h(12). In this regard, MichCon notes that Mr. Miller never addressed that issue, but instead focused on facts and legal arguments that go to the proper allocation of the expense, i.e. in either a GCR reconciliation or a general rate case. 2 TR 65. Further, MichCon contends that even if the contract provides load to all if its customers in the Alpena service area is irrelevant when considering that its system is integrated, and thus supply and transport of gas is not divisible between customer types. Id., 67.

In considering these arguments, the fact that the ANR contract was not included in MichCon's GCR plan is explained by the sequence testified to by Mr. Clinton: the GCR plan is filed on December 30, 2009; MichCon is advised on June 28, 2010, by the operator of the East Caledonia facility that it would be idled in September; MichCon enters into the Alpena ANR contract for a 24-month term commencing on September 1, 2010. Id., 66, 176. While MichCon could have amended its plan, on June 28, 2010, that case was at the point that the next step was the filing of post-hearing Reply Briefs on July 16. Disregarding the administrative challenges presented by an amendment to the plan at that point in the process, Act 304 contemplates consideration of expenses in a reconciliation proceeding that "could not be considered adequately at a previously conducted…" GCR plan case. MCL 460.6h(12). The June 28, 2010 notice from the operator of the East Caledonia facility precluded adequate consideration of alternative supply sources in the GCR plan, and thus the issue is properly considered in this case.

As for the substantive issue, MichCon's contention that the only consideration is whether the contract expense is reasonable and prudent is much too narrow. While the reasonableness and prudence of the expense is an issue under MCL 460.6h(12), it is not the only consideration. As argued by the Attorney General, another consideration is whether the expense is properly considered a gas supply activity that provides gas for GCR customers. This is precisely what Mr. Miller is contending in his testimony that the contract is a means to effectuate system integration, and not a means to obtain gas, thereby precluding any consideration of the cost of the contract as an allowable gas supply expense under MCL 460.6h(3). More importantly, the Commission also took this approach when it held that the costs of the Trufant contract be recovered in base rates because it constituted a "distribution integration function." Exhibit AG-7, p 66-67.

In determining whether the ANR Alpena contract is a gas supply activity, it is important to consider the substantive differences between it and the Trufant contract. As discussed, the ANR Alpena contract became necessary when MichCon was notified by the operator of the East Caledonia facility that it would be idled in 2 months. To replace that supply MichCon entered into a short-term (24 months) transportation contract for MichCon gas with variable rates in order to ensure safe and reliable service for its customers, primarily GCR, in the Alpena Service area. Conversely, the Trufant Contract was for 60 years and provided for relatively stable costs, both of which rendered it "administratively expedient to include it in base rates instead of re-litigating those costs…" in an annual GCR reconciliation case. 2 TR 125. Further, the length and terms of the Trufant contract, along with the events leading up to the agreement discussed in footnote 6, *supra*, rendered it, in the words of Mr. Miller, the functional equivalent of a pipeline. None of these circumstances are present in either the terms of the ANR Alpena contract, or the events making it necessary. Therefore, the reasoning in the Commission's holding in Case Nos. U-13898 & U-13899, along with the effect of those holdings, simply do not apply to the issue in this case. Exhibit AG-7. Finally, as Ms. Schmidt testified:

> [T]here is no requirement within the Company's GCR Clause that a pipeline be used to "obtain gas" in order for the costs of that contract to be recovered through the GCR process. Section C7.1 B states in part:
>
> Booked Cost of Gas Sold
>
> (1) Booked cost of gas sold as used in this Rule includes the following as expensed on the books of Company:
> (a) Interstate Purchases: Cost for gas service.
> (b) Intrastate Purchases: Costs for gas service incurred pursuant to all contracts on file with the Commission.
>
> The ANR Alpena contract can be used for both interstate and intrastate purchases and is therefore properly included in the booked cost of gas sold. 2 TR 126.

Based on the foregoing, the ANR Alpena contract is neither the functional equivalent of a pipeline, nor a component of MichCon's system integration, under the Commission's analysis of the Trufant contract. Rather, it is a short-term variable contract to provide for the transportation of MichCon's gas to its Alpena system, and as such is properly considered a gas cost supply under the Company's GCR clause.

The next issue is whether the ANR Alpena contract is properly considered a GCR gas supply cost given that it serves all customers in MichCon's Alpena System. Mr. Miller attempted to quantify the amount of gas for each customer class that will be transported under ANR Alpena contract during the GCR Year, but admitted it was based on "limited information." Id., 184-185. Based on Mr. Clinton's testimony, no weight can be afforded to Mr. Miller's opinion:

> Mr. Miller's analysis purports to show that the ANR Alpena contract only serves approximately 55% of GCR load and the remaining 45% relates to EUT electric generation peaker plant load. The assumptions contained in Mr. Miller's analysis do not reflect the actual operation of MichCon's system. The peaker plants included in this analysis as EUT load are not served and can

> not be served off of the ANR Alpena contract, but instead are served using gas received from Great Lakes Gas Transmission and production gas received at the North Hayes 6 interconnect. Mr. Miller's analysis is also incorrect because two of the four peaker plant facilities, Consumers Gaylord and Consumers Mackinaw, are in fact GCR customers not EUT customers as Witness Miller incorrectly assumes. Mr. Miller's analysis is incorrect and operationally impractical, and therefore should be rejected.
> Id., 67.

Mr. Clinton's testimony on whether it is possible to distinguish between customer classes, and thus assign the cost of the ANR Alpena contract accordingly, is well-taken:

> MichCon operates an integrated system to maintain system integrity and does not segregate the necessary supply and transport to specific classes of customers. Further, MichCon lacks the ability and precision to assign the necessary supply and transport on an individual customer basis, and it would be impractical from an operational standpoint to do so.
> Id.

Based on this evidence, it is proposed the Commission adopt the position of MichCon and Staff in their respective briefs: While the ANR Alpena contract benefits all customers to some extent, it is required to provide reliable service to Alpena area GCR customers, thus the expense is properly considered a GCR cost of gas until it can be allocated in a rate case. Staff Initial Brief, p 8; MichCon Reply Brief, p 13.

Turning to the ultimate question, there is no evidence that the ANR Alpena contract is unreasonable or imprudent. To the contrary, the only evidence is that it "was an appropriate, reasonable, and prudent alternative to meet peak day requirements. The ANR Alpena contract was and still is required to provide service to GCR customers and thus represents a reasonable and prudent way to deal with the closure of the East Caledonia processing facility during the GCR plan year." 2 TR 66. Therefore, the ANR Alpena contract was reasonable and prudent under the circumstances, and the $1,212,253 expense incurred under it during the GCR Year is properly included in the cost of gas.

C. The RRC's Proposed Adjustments

The RRC challenges certain Fixed Price Purchases (FPP) made during the GCR Year, and seeks two separate determinations. The first is that MichCon's total actual sendout for the GCR Year was 6.7 Bcf above its GCR Plan. The second is that in future GCR reconciliation proceedings MichCon has the burden to prove the timing of all purchases under the volume cost averaging (VCA) method were reasonable and prudent based upon the market conditions that existed at the time the purchase decisions were made. The MCAAA agrees with these recommendations.

For the GCR Year, Mr. Hollewa determined MichCon purchased 78.MMDth of gas under its FPP, constituting 65.5% of its total purchases. According to his calculations, for that period, the FPP cost $246,100,000 more than the published index price for natural gas, which added over $200 to the bill of an average MichCon customer. 2 TR 137. For the 2011-2012 GCR Year, he estimates the FPP will result in an added cost of $175,000,000 when compared with the actual cost of supply at the actual NYMEX Settlement price for the first 9 months of the GCR Year and NYMEX price for the last 3 months. Id., 138. Based on these calculations, Mr. Hollewa testified that between 2006 and 2012, the excess cost for FPP will total $1,180,000,000. [8] Mr. Hollewa attributes these excess costs to MichCon making "purchases as fast as possible in a declining market", and failure "to pay proper attention to a changing market…and recognize that during the past two years, supply/demand fundamentals have been the primary factors for prices, not market speculation." Id., 140. Accordingly, Mr. Hollewa characterized the results of the FPP purchases as "abysmal", and indicates that MichCon has failed "to exercise prudent judgment in the administration of the FPP guidelines…." Id., 140. In light of these perceived shortcomings, i.e. the excess cost of its purchases relative to the market price, "the RRC urges the Commission to include in its order in this case a clear directive to MichCon that in future GCR Reconciliations, the Company has the burden of proving with evidence that the timing of all its purchases under the VCA method are reasonable and prudent based upon the market conditions that existed at the time the purchase decisions were made." RRC Initial Brief, 6-7; 12.

MichCon challenges Mr. Hollewa's characterization of its purchases since 2006 as excessive by noting they were all reviewed and approved by the Commission in GCR Reconciliation cases that the RRC intervened and participated in. As a result, the purchases were, as a matter of law, reasonable and prudent, and beyond the scope of this case. MichCon's argument on this point is valid. As for the reasonable and prudent standard, MichCon correctly notes that the RRC's proffered definition is directly contrary to that applied by the Court of Appeals: whether the actions of a utility were reasonable and prudent under Act 304 should be made "in light of existing conditions at the time its decision to purchase gas was made." *Attorney General v Public Service Commission*, 161 Mich App 506, 517 (1987). The fact that a price of a purchase was in excess of market price at the time it was made does not, standing alone, render it unreasonable or imprudent. Rather, all of the conditions that existed when the decision to effectuate the purchase was

---

8 Mr. Hollewa set the excess cost for FPP at $1,007,000,000 for the period between the 2006-2007 GCR year and the 2010-2011 GCR year. 2 TR 137.

made must be considered.

Having established the standard that controls the reasonable and prudent determination, the inquiry turns to the specific transactions the RRC seeks to have disallowed in this proceeding. Despite his general criticisms discussed above, Mr. Hollewa concedes that most of the FPP purchases during the GCR Year were “technically correct”, except for the challenged purchases that he contends should be disallowed because “they did not meet FPP guidelines.” Id., 141. Mr. Hollewa referenced his testimony and Exhibit RRC-1 (attached to the RRC’s Initial Brief) in Case No. U-15701-R, as the foundation to his challenge to the purchases in this case:

> The purchases on Lines 38-41 from 10/06/08 and 10/15/08 totaled 11,132,500 Dth and were Year 1 purchases in the 2nd and 1st Quartiles. As detailed above, the maximum of 35% for Year 1 purchases using the 12-Month QIM NYMEX had already occurred in the period from 8/28/08 through 9/11/08. Therefore, the purchases on Lines 38-41 were not permitted under the FPP Guidelines and should have been deferred to a later time when purchases could be made for the “Current Year”. The first trading day for the complete 4/01/09-3/31/10 NYMEX Strip occurred on 2/26/09 with a NYMEX Close of $4.9828 and a NYMEX High of $5.0164. The last trading day for the complete 4/01/09-3/31/10 NYMEX Strip occurred on 3/27/09 with a NYMEX Close of $4.6191 and a NYMEX High of $4.7477. Therefore, I compared the highest strip price of $5.0164 with the weighted average NYMEX of $7.9385 for the purchases of Lines 38-41. I am recommending a disallowance of $32,530,278 ($7.9385 - $5.0164 x 11,132,500 Dth) for those purchases because they exceeded the FPP Guidelines.
> Id.

MichCon’s rebuttal testimony in Case No. U-15701-R indicated the purchases were the first year of 2 and 3 year purchases. However, Mr. Hollewa contends “the data now shown on Lines 6-8 and 10-11 of Exhibit A-2 represent very unique changes for these FPP which have never occurred in any of the previous fixed price purchases.” Id., 142.

The first grouping of transaction that Mr. Hollewa contends underwent these “unique changes" are depicted on Lines 38-39 of RRC-1, which indicate the receipt point as Viking, but on Lines 6-7 on Exhibit A-2 indicate the receipt point as PEPL. Mr. Hollewa opined the different receipt points "demonstrates the extreme lengths that the Company used to maximize FPP because the likely reason was that MichCon did not have 17,000 Dth/day of firm transportation available for the 2009-2010 GCR Year on PEPL." Id. In light of this purported manipulation to achieve maximum amount of FFP in the second quartile of the 2009-2010 and 2010-2011 GCR years, and violation of the FPP guidelines, Mr. Hollewa recommends disallowance of:

- $280,023 for the Line 6 purchase;
- $470,064 for the Line 7 purchase.

The next group of transactions is depicted on Lines 40-41 on Exhibit RRC-1 and Lines 10-11 on Exhibit A-2, and had different receipt points, suppliers, and volumes. Accordingly, Mr. Hollewa recommends a disallowance of:

- $173,034 for the Line 10 purchase;
- $156,037 for the Line 11 purchase.

In total, the RRC seeks a disallowance of $1,079,158 for the Lines 6, 7, 10, and 11 purchases under Mr. Hollewa's abuse of the guidelines/manipulation theory.

The final proposed disallowance is the transaction depicted on Line 8 of Exhibit A-2, which is a 3-year purchase that was not included in the 2009-2010 GCR Plan. The last 2 years of this "truncated" purchase can, under the FPP guideline, only be completed if the NYMEX is at or below the NYMEX Trigger. Mr. Hollewa testified the purchase violated this requirement, and thus recommends a $78,956 disallowance. Id., 142-143. In the event the disallowance for the entire Line 11 transaction under the manipulation theory is not imposed, Mr. Hollewa recommends a minimum disallowance of $16,425 under the truncated purchase theory. Id., 143.

MichCon counters Mr. Hollewa's recommendation through the testimony of Mr. Clinton, who notes that all of the purchases on Exhibit A-2 were:

> [P]art of a 1-year, 2-year or 3-year supply strip as indicated in column (l). Strip purchases are often achieved by combining a series of individual monthly, seasonal, or annual purchases, each covering a different delivery period with a different price. Consequently, the NYMEX price of individual purchases shown in column (h) may be greater than or less than the NYMEX trigger in column (m). However the average of all individual purchases that comprise the 1-year, 2-year, or 3-year strip indentified in column (l) were at or below the indicated NYMEX trigger in column (m).
> 2 TR 40.

Thus, contrary to Mr. Hollewa's focus on the individual transactions, Mr. Clinton testified these short-term purchases of various volumes and receipt points are components of larger multi-year purchase packages:

> [T]he two purchases on line 6 (deal no. 1401714) and line 7 (deal no. 1401719) of Exhibit A-2 were made to satisfy a two-year 50th percentile purchase objective in accordance with the Commission approved Fixed Price Guidelines. As shown on page 1, line 10 of Exhibit A-22, the NYMEX trigger price in column (j) was $8.316. As shown on page 1, line 9 of Exhibit A-22, MichCon's NYMEX price of all purchases that comprised the entire two-year purchase package was $8.2854 in column (j). Therefore, MichCon's NYMEX price was $0.0306 below the NYMEX trigger price as shown on page 1, line 11 of Exhibit A-22.
>
> The three purchases on line 8 (deal no. 1418657), line 10 (deal no. 1418666), and line 11 (deal no. 1418667) of Exhibit A-2 were made to satisfy a three-year 25th percentile purchase objective in accordance with the Commission approved Fixed Price Guidelines. As shown on page 2, line 7 of Exhibit A-22, the NYMEX trigger price in column (k) was $7.915. As shown on page 2, line 6 of Exhibit A-22, MichCon's NYMEX price of all purchases that comprised the entire three-year purchase package was $7.8785 in column (k). Therefore, MichCon's NYMEX price was $0.0365 below the

> NYMEX trigger price as shown on page 1, line 8 of Exhibit A-22.
> 2 TR 58.

Mr. Clinton also testified the receipt changes are due to a number of factors, such as the opportunity for a lower cost and system requirements. 2 TR 41. In fact, changing the receipt point for transactions during the GCR Year resulted in savings of $38,124 and $12,647. Id., 62. Based on this record, the amendment of a contract to change a receipt point does not, as Mr. Hollewa testified, equate to an abuse of the FPP guidelines or manipulation.

Mr. Clinton also testified that the challenged transactions were reasonable and prudent at the time the decision to purchase the gas was made:

> The purchases in question all occurred in October of 2008, and were made in accordance with the Commission approved Fixed Price Guidelines in effect at that time. Specifically, the Fixed Price Guidelines in effect at that time were contained in Exhibit A-8 of the Company's GCR Plan filing, Case. No. U-15451, a copy of which is included with my testimony as Exhibit A-24. Those fixed price guidelines were approved by the Commission on August 26, 2008. Therefore, the statement made on page 10 of Mr. Hollewa's testimony that MichCon violated Section 3.6 of the U-15701 Fixed Price Guidelines cannot possibly be true as these guidelines did not even exist in October 2008. The U-15701 Fixed Price Guidelines, which introduced additional language in Section 3.6 surrounding truncated purchases was filed by MichCon on December 29, 2008 and subsequently approved by the Commission on April 30, 2009. The purchases in question were made in accordance with the Quartile Index Method ("QIM"), under which the price of a future 12-month, 24-month, or 36-month delivery period is compared to the price of a historical 12-month, 24-month, or 36-month delivery period. For example, when evaluating a 24-month future delivery period purchase, the average price of all 24 future delivery months was compared to the average price of all 24 historical delivery months. If the price of the future 24-month delivery period is at or below the price of the historical 24-month delivery period, then that purchase is appropriate pursuant to the QIM. Mr. Hollewa incorrectly compares the price of a future 12-month delivery period to the price of a historical 24-month and 36-month delivery period, which is inconsistent with the fixed price guidelines for this GCR period. The appropriate comparison, consistent with the GCR fixed price guidelines, is between the average price

> of all purchases that comprise the entire 24-month or 36-month future delivery period and the price of the respective 24-month and 36-month historical delivery period.
> Id., 59-60.

Accordingly, none of the disallowances proposed by Mr. Hollewa can be sustained. Rather, each of those transactions was reasonable and prudent in light of existing conditions at the time MichCon decided to purchase the gas.

The RRC's final challenge pertains to MichCon's storage operations, and is based on an inconsistency it claims exists between Ms. Goodwin's testimony and a discovery request. The testimony was by Ms. Goodwin: as of "June 2010 plan update, MichCon modified its plan to reflect forecasted GCR/GCC markets based on an assumption of 15-year normals (1995-2009)". 2 TR 76. In two discovery responses, MichCon provided all plan updates that were based on the 15-year normals, including a revised Exhibit A-12. Consistent with this information, and to maintain consistency with the plan updates as of June 2010, Ms. Goodwin's testified to "a (0.4) Bcf decrease to GCR supply requirements (2 TR 83, Line 19) and total actual sendout that was 6.7 Bcf above plan (Id., Line 21)." Id., 151. As it pertains to this case, the GCR Year reconciliation should have a "beginning storage balance of 1.7 Bcf more than plan plus ending storage balance of 5.4 Bcf less than plan minus decrease of 0.4 to GCR supply equals 6.7 Bcf above plan." Id. The significance of adjusted storage balance is its impact on MichCon's proposed:

> [S]torage reduction of 8.3 Bcf for normal weather in its GCR Plan in Case No. U-16482 for the 2011-2012 GCR Year. The Company's operations in CTN weather during 2010-2011 shows the value of the continued use of 67 Bcf for normal wether (sic). The actual storage use was 74.1 Bcf or 7.1 Bcf greater than normal with a decrease of 0.4 Bcf in GCR purchases. Ms. Goodwin did not report any operating problems with this storage level and stated that "Michcon continued to buy at normal weather levels and relied upon its

reserves in CTN Protection to serve the higher sendout." In addition, the "Year Conclusion" on Page BJG-17 included the following:

> "MichCon was able to modify its operating plan during the operating year in response to these factors, and maintained sufficient storage balances and flowing supply to meet the potential CTN exposure and peak day requirements."

Id., 152.

While the RRC seeks a finding that the total actual sendout for the GCR Year was 6.7 Bcf above the GCR Plan, Mr. Hollewa testified that MichCon established the need to assign 80 Bcf of storage for GCR/GCC customers. Id.

MichCon takes issue with the substance of Mr. Hollewa's testimony regarding an inconsistency in Ms. Goodwin's testimony, and his recommendation on its storage operations. In regards to the former, it notes the GCR plan was formulated on weather normalized sales using "Hinge Fit" Normals and not 15-year Normals. Accordingly, Exhibit A-12 and Ms. Goodwin's testimony at 2 TR 76 is based on "Hinge Fit" Normals. In reviewing this evidence, MichCon's contention is accurate. In regards to Mr. Hollewa's recommendation, MichCon argues the proper amount of storage is beyond the scope of a GCR reconciliation case. Rather, it is a determination properly made in a GCR plan case, as evidenced by the fact the issue is being addressed in Case No U-16921, which is MichCon's pending GCR plan case for 2012-2013. Under the express terms on MCL 460.6h(12), the storage allocation is beyond the scope of this proceeding, which requires the rejection of Mr. Hollewa's contention that 80 Bcf of storage should be established. Given this, MichCon's proposed finding that its actual system operations for the April 2010 through March 2011 GCR year were reasonable and prudent, is adopted.

D. The MCAAA's Proposed Adjustment

The MCAAA supports the adjustments advanced by Staff, the Attorney General and the RRC, the validity of which are discussed above, but does not advance its own adjustment(s). Rather, it argues that affiliate transactions have resulted in "unregulated windfall profits that relate to the difference between the lower production inputs into MGAT by gas producers compared to the higher amount of gas that MGAT has reported sold to MichCon, on a long term multi-year basis." MCAAA Closing Brief, p 13. Therefore, it joins in the adjustment proposed by Staff and supported by the Attorney General concerning the MGAT transactions between April 1 and September 27, 2010. While it cites to the evidence offered by those parties in support of the adjustment, the MCAAA argues additional support exists in MichCon's responses, or lack thereof, to its discovery requests (Exhibits MCAAA-1 through 7), and the arguments the MCAAA has made in other cases.

There are two insurmountable legal deficiencies in the MCAAA's argument. First, if a party to a contested case is of the opinion that discovery responses are somehow deficient; its remedy lies with a Motion to Compel. See R 460.17317; MCR 2.309. In this case, the MCAAA did not file such a motion, and thus cannot argue the discovery responses were somehow deficient. [9] Concomitantly, the purported failure to answer the MCAAA's discovery requests does not constitute "a failure of MichCon to carry its burden under Act 304 to establish that its…" affiliate transactions were reasonable and prudent. MCAAA Initial Brief, p 16. Second, the argument of a party in another case is just that, the

9 Prior to filing a Motion to Compel, the requesting party must confer with the other party in order "to secure the disclosure without court action." MCR 2.309(C). In its Reply Brief (p 29), MichCon states the MCAAA did not provide it with any indication it found the discovery responses insufficient.

argument of a party. To give effect to such an argument, it must be adopted by the Commission or a reviewing court. Noticeably lacking in the MCAAA's briefs is any reference to a Commission Order, or Court of Appeals decision, which adopted its argument. For these reasons, the basis for adjusting the MGAT transactions MichCon made during the GCR Year advanced by the MCAAA is rejected.

VI.

CONCLUSION

Any contention advanced by a party to this case that is not expressly addressed and determined in this Proposal for Decision is, after being given full consideration based on the record and arguments of the parties, rejected. In considering all of the evidence on this record and the arguments of the parties, it is proposed the Commission find:

1. MichCon took all appropriate legal and regulatory actions to minimize the cost of purchased gas.
2. MichCon operated its system in a reasonable and prudent manner during the GCR Year.
3. Staff's proposed adjustment of $50,000 for the 2009-2010 booked GCC reconciliation amount is warranted. Consistent with that adjustment, the 2009-2010 booked GCC reconciliation amount should be reduced to $509,308. Exhibit S-1, Line 50.

4. Staff's proposed adjustment of the GCR beginning balance to $9,151,562 is consistent with the Commission's Order of December 6, 2011, in Case No. U-15701-R.
5. All of MichCon's purchases from MGAT during the GCR Year should be priced at the city-gate index, as opposed to the jurisdictional rate, consistent with the Commission's Order of September 28, 2010, pp 23-23, in Case No. U-16146. Therefore, Staff's proposed adjustment of $1,142,595, representing the difference between the jurisdictional rate and city-gate index for purchases between April 1 and September 27, 2010, is warranted.
6. Staff's proposed adjustment of $700,794 of the filed inventory cost based on a LIFO rate of $7.1727/Mcf is warranted.
7. Staff's proposed cumulative over-recovery, with interest, of $5,689,360 for the GCR Year is warranted. Exhibit S-1, line 66.
8. The Attorney General's proposed adjustment of $1,212,253, representing the cost of the ANR Alpena contract, cannot be sustained.
9. The RRC's proposed disallowance of purchases based on its contention that they were unreasonable and imprudent, and/or contrary to the FPP guidelines, cannot be sustained.
10. The RRC's proposed assignment of 80 Bcf of storage for GCR/GCC customers cannot be sustained.
11. MichCon's reconciliation should otherwise be accepted.

MICHIGAN ADMINISTRATIVE HEARING SYSTEM
For the Michigan Public Service Commission

Dennis W. Mack

Digitally signed by Dennis W. Mack
DN: cn=Dennis W. Mack, c=US, email=mackd2@michigan.gov
Date: 2012.05.29 14:05:15 -04'00'

Dennis W. Mack
Administrative Law Judge

May 29, 2012
Lansing, Michigan